

**IN THE HIGH COURT OF FIJI**  
**AT LABASA**  
**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO.: HAC 58 of 2018**

**BETWEEN:** STATE

**PROSECUTION**

**AND:** PETARIKI LESUMA

**ACCUSED PERSON**

**Counsel:** Ms. L. Bogitini for State  
Ms. K. Boseiwaqa for Accused

**Hearing Date:** 17 June 2019

**Summing Up:** 18 June 2019

**Judgment:** 19 June 2019

**Sentence:** 20 June 2019

**SENTENCE**

1. The name of the complainant is suppressed.
2. Mr. Petariki Lesuma, you stand convicted for one count of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act, which carries a maximum penalty of life imprisonment.
3. It was proved during the hearing that you have started a conversation with the complainant in the pretext that you wanted to know about her relationship with her boyfriend. The complainant is the daughter of your own brother. You have then taken her into the bedroom and hugged her. Thereafter, you kissed the lips of the complainant and sucked her breast. You then pressed your penis on the vagina of the complainant on the top of her short. You had then removed the short and undergarment of the complainant and inserted your penis into her vagina without her consent.

4. Rape is one of the most humiliating and distressing crimes. It becomes more serious when it is involved with a child victim and a known perpetrator to the child victim. It not only violates the physical self of a person, but also destroys the personal dignity and self-autonomy of a person. In this case, the complainant was sexually abused by a person who is known to her. This form of sexual exploitation of children by the known adult is a serious offence.
5. The Fiji Court of Appeal in **Subramani v State [2018] FJCA 82; AAU0112.2014 (1 June 2018)** has discussed the appropriate objective of the sentencing of offenders who have committed offences of gross sexual exploitation of young children, where the Fiji Court of Appeal held that:

*“The offence of rape of young person related to the appellant is a serious offence. In this case the complainant was 11 years old and the appellant was her grand uncle (her grandfather’s brother). The authorities indicate that whilst rehabilitation is a factor to be considered when fixing a non-parole period, so also are deterrence, denunciation, condign punishment and community protection and expectations. The appropriate person to balance these objectives in each case is the sentencing judge. In the present case, given the age of the appellant, rehabilitation is not a particularly relevant matter whereas the expectations of the community and the protection of young girls should be reflected in both the head sentence and the non-parole term so as to send a strong signal that the courts will impose appropriate sentences in such cases.”*

6. The Supreme Court of Fiji in **Aitcheson v State [2018] FJSC 29; CAV0012.2018 (2 November 2018)** held that the increasing prevalence of the crimes of this nature demands the courts to consider widening the tariff for the rape against children. The Supreme Court of Fiji held that:

*“The increasing prevalence of these crimes, crimes characterised by disturbing aggravating circumstances, means the court must consider widening the tariff for rape against children. It will be for judges to exercise their discretion taking into*

*account the age group of these child victims. I do not for myself believe that that judicial discretion should be shackled. But it is obvious to state that crimes like these on the youngest children are the most abhorrent.”*

7. The main purpose of this sentence is founded on the principle of deterrence. It is a responsibility of the court to deter offenders or other persons from committing offences of the same or similar nature and protect the community from offenders of this nature. A custodial sentence is inevitable for the offences of this nature in order to demonstrate the gravity of the offence and also reflect that the society denounce such crimes without any reservation.
8. Hon. Former Chief Justice Gates in **Aitcheson v State ([2018] FJSC 29; CAV0012.2018 (2 November 2018))** held that the tariff to rape of a child is between 11 - 20 years' imprisonment period. The tariff that was in force for the offence of rape on the 11th of June 2018 ranges from ten (10) years to sixteen (16) years. **(Anand Abhav Raj v State [2014] FJSC 12; CAV0003.2014 (20 August 2014))**.
9. According to the victim impact report, the complainant has been going through an adverse emotional and psychological trauma due to this incident. Her life style has adversely changed after this incident. Therefore, I find the level of harm is substantially high in this offending.
10. You have called the complainant into the sitting room when she was trying to sleep in her bedroom while others at home was sleeping. You have then started a conversation in the pretext that you wanted to know about her relationship with her boyfriend. You have then taken her into the bedroom and forcefully committed this offence on her when she was crying. You have unleashed this disgraceful sexual assault on the complainant when she was afraid and keep on crying. It appears that you have quickly planned to commit this offence when you found an opportunity where the complainant had no prospect of escape or seek assistance. Hence, I find the level of culpability in this offending is substantially high.

11. You have blatantly breached the trust that the complainant reposed in you as her uncle. Moreover, you have breached the trust that your own brother, the father of the complainant, had in you by committing this crime to the complainant. Actually the complainant explained in her evidence that she treats you as her father. She thought that you were asking about her relationship with the boyfriend in order to advise her about such matter. Moreover, the age difference between you and the complainant is substantially high. You were 42 years old and the complainant was 16 years old when this incident took place. I consider these grounds as aggravating factors.
12. The learned counsel for the defence in her mitigation submissions discussed about your family and personal circumstances, which has no much mitigatory values.
13. You are a first offender. However, there is no evidence or facts before the court about your general reputation in the society and also no information about any significant contribution that you have made to the community. In view of these factors, you are only entitled to a meager discount for your previous character.
14. Having taken into consideration the above discussed reasons, I sentence you to a period of fifteen (15) years of imprisonment to this offence of Rape as charged.
15. Having considered the seriousness of this crime, the purpose of this sentence and your age, I find thirteen (13) years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for a period of thirteen (13) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.


### **Head Sentence**

16. Accordingly, I sentence you to a period of **Fifteen (15) years** imprisonment to the offence of Rape as charged. Moreover, you are not entitled to any parole for a period of **thirteen (13) years** pursuant to Section 18 (1) of the Sentencing and Penalties Act.

**Actual Period of the Sentence**

17. You have been in remand custody for this case for a period of ten (10) months and (26) days as you were not granted bail by the court. In pursuant of Section 24 of the Sentencing and Penalties Act, I consider the period of eleven (11) months as a period of imprisonment that have already been served by you.
  
18. Accordingly, the actual sentencing period is **fourteen (14) years and one (1) month** imprisonment with non-parole period of **twelve (12) years and one (1) month**.
  
19. Thirty (30) days to appeal to the Fiji Court of Appeal.



  
R.D.R.T. Rajasinghe  
Judge

**At Labasa**  
20 June 2019

**Solicitors**  
Office of the Director of Public Prosecutions for the State  
Office of the Legal Aid Commission for the Accused